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**IN THE SUPREME COURT
OF THE UNITED STATES**

October Term, 1952

No. 730

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SUPREME COURT, U. S.

**MONTGOMERY BUILDING AND CONSTRUCTION
TRADES COUNCIL, et al.,**
Petitioners,

vs.

LEDBETTER ERECTION COMPANY, INC.

**Petitioners' Statement of Reply to Brief
and Argument in Opposition**

**J. L. BUSBY,
EARL MCBEE,
714 Massey Building,
Birmingham 3, Alabama,**

**J. ALBERT WOLL,
HERBERT S. THATCHER,
JAMES A. GLENN,
JOSEPH E. FINLEY,
736 Bowen Building,
Washington 4, D. C.,**

Counsel for Petitioners.



IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1951

No. 736

MONTGOMERY BUILDING AND CONSTRUCTION
TRADES COUNCIL, et al.,
Petitioners,

vs.

LEDBETTER ERECTION COMPANY, INC.

Petitioners' Statement in Reply to Brief and Argument in Opposition

The only portion of the brief and argument which Respondent, Ledbetter Erection Company, Inc., filed in opposition to the Petition for Writ of Certiorari herein which is not adequately answered in the Petition itself is that set forth on page 7 thereof as Respondent's Point No. 2. This point also appears as Respondent's Question No. 2 (p. 5), which is as follows:

"2. Whether a petition for writ of certiorari filed more than ninety days after the denial of the only application for rehearing permitted under the Rules of Practice of the Supreme Court of Alabama is timely filed."

The answer to this question is as follows:

Under prevailing practice in the Supreme Court of Alabama it is permissible for a Justice during term to restore

a case to the rehearing calendar in spite of the rule which permits only one application for rehearing to be filed. In cases such as the present one where the Court has written an opinion in connection with the first application for rehearing, it is the general practice of the Alabama Supreme Court to permit a second application for rehearing to be heard in order to answer any questions which may have arisen by virtue of such second opinion on the first rehearing. That is what was done in the present case as seen by the certificate the Clerk of the Supreme Court of Alabama under seal of that Court, a copy of which is attached hereto as Exhibit "A" and the original of which has been filed with the Clerk of this Court, and is further seen by the letter from state Counsel for Petitioners herein to the writer of this brief, a copy of which is attached hereto as Exhibit "B." As further seen by said certificate, the instant case was pending before the Supreme Court of Alabama until the second order for application for rehearing was overruled on March 6, 1952, the Supreme Court of Alabama having considered and disposed of the second application for rehearing on its merits. Further the Record itself herein (R. 58) clearly indicates that the second application for rehearing was "overruled" and not dismissed, and was "duly examined and considered by the Court." The present petition for Writ of Certiorari was filed in this Court on April 25, 1952, which is well within the period permitted under the Judicial Code (28 U. S. C. Sec. 2101). See *Gypsy Oil Co. vs. Escoe*, 275 U. S. 498.

Respectfully submitted,

J. L. BUSBY,
EARL McBEE,
714 Massey Building,
Birmingham 3, Alabama,

J. ALBERT WOLL,
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Washington 5, D. C.,

Counsel for Petitioners.

EXHIBIT "A"

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT
THE SUPREME COURT OF ALABAMA

3 Div. 600

MONTGOMERY BUILDING AND CONSTRUCTION

TRADES COUNCIL, ET AL.,

Appellants.

v.

LEDBETTER ERECTION COMPANY, INC.,

Appellee.

MONTGOMERY
 CIRCUIT COURT
 IN EQUITY

I, **J. Render Thomas**, Clerk of the Supreme Court of Alabama, hereby certify that the Supreme Court of Alabama, in the above styled cause, rendered the opinion affirming the decree of the Circuit Court, in Equity, on June 28, 1951, as shown on pages 38 to 54 of the printed "Transcript of Record"; that thereafter on July 10, 1951, the appellants filed an application for a rehearing which is shown on said printed transcript of record at page 57; that thereafter on January 10, 1952, the Supreme Court of Alabama rendered an "Opinion on Rehearing," which is shown on said printed transcript of record at pages 54 to 56 and overruled said application for rehearing—see order page 57; that thereafter on January 21st, during the same term of court, as authorized by Mr. Justice Foster, author of the opinion, the appellants filed an application for rehearing which application is shown on page 58 of said transcript of record, and said cause was pending on said second application for rehearing until March 6, 1952, at which time the Court considered and overruled said second application—see order overruling the same on page 58 of said printed transcript of record.

Under the practice of this Court, any Justice thereof may, during the term in which an application for rehearing is acted upon, of his own motion, place the cause on the rehearing docket.

WITNESS, J. Render Thomas, Clerk of the Supreme Court of Alabama, and the Seal of the Court attached, this the 23rd day of May, 1952.

(S) J. RENDER THOMAS,
Clerk of the Supreme Court
of Alabama.

Seal of the Supreme
Court of Alabama

EXHIBIT "B"

Phones 7-5133—7-5134

EARL McBEE
Attorney at Law
Suite 714 Massey Building
Birmingham 3, Alabama

May 24, 1952.

Messrs. Woll, Thatcher, Glenn & Finley,
736 Bowen Building,
Washington, D. C.

Re: *Montgomery Building & Construction
Trades Council*

vs.

Ledbetter Erection Company, Inc.

Attention Mr. Herbert S. Thatcher.

GENTLEMEN:

Following our telephone conversation, I called the Supreme Court of Alabama. The clerk advised me that nothing could be done unless I personally went to Montgomery to attend to it. When I arrived, I found that the members of the Court were not in their offices because of the death and pending funeral of the wife of the retired Chief Justice. After about three hours effort, I was finally able to get the certificate from the Clerk of the Alabama Supreme Court which was mailed to you from Montgomery yesterday.

I succeeded in seeing Mr. Chief Justice J. Ed. Livingston. He suggested that he himself would not do so but it would

be proper for the clerk to prepare a certificate showing clearly that the cause was pending in the Supreme Court of Alabama until March 6, 1952, at which time that Court considered and overruled the Second application. The clerk remembered the circumstances of the filing of the Second application. He refused to file it until Mr. Justice Foster, the author of the opinion, authorized it to be done. Under the practice as shown in the certificate, any Justice has authority during the term to order a case restored to the rehearing docket. It therefore is clear that Mr. Justice Foster was acting in keeping with the practice of the Supreme Court of Alabama when he verbally authorized the case to be restored to the rehearing docket. The reason for this action in so doing was that the original opinion was extended on the First rehearing. It is usual in such cases under the practice in the above Court for the Justice writing the opinion to order the case restored to the rehearing docket for consideration of a Second application for rehearing. This is what was done in the instant case.

The above mentioned certificate was made under the supervision of the Chief Justice and with the consent of Mr. Justice Foster, obtained by telephone. I trust it will be sufficient to show that the Supreme Court of Alabama did actually have the case pending before it until March 6, 1952, at which time a ruling was made on the merits of the motion.

Had the Court not done so, its order would have been that the application for rehearing be stricken. The only other procedure which would have resulted in a non-consideration of the merits would have been to refuse to permit the filing of the Second application.

I sincerely hope that the certificate, together with this letter of explanation, will be adequate to serve the purpose intended. At any rate, it is the best I could do.

Yours very truly,

(S) EARL MCBEE.

EM/dm